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09/498,801	01/31/2000	Gary T. Boyd	55241USA9A	9317

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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS

AND INTERFERENCES

Paper No. 22

Application Number: 09/498,801

Filing Date: February 02, 2000

Appellant(s): Boyd et al

Iain A. McIntyre

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/14/03.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Pursuant to the withdrawal of some of the rejections, as set forth below, groups directed to Issue C and Issue F are no longer germane to this appeal. The remaining group are:

I. (Issue B) The rejection of claims 1 and 12 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or

fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

II. (Issue D) The rejection of claims 2-9 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

III. (Issue E) The rejection of claims 2-9 and 13-16 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

5,800,032	Uchiyama et al	9-1998
US2002/0003508 A1	Schehrer et al	1-2002

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

I. (Issue A) Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Uchiyama et al. This rejection is set forth in prior Office Action, Paper No. 14.

II. (Issue B) Claims 1 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Schehrer et al. This rejection is set forth in prior Office Action, Paper No. 14.

III. (Issue C) The rejection of claims 1, 12 and 13 under 35 U.S.C. 103(a) as being unpatentable over Handschy et al ('451) is withdrawn.

IV. (Issue D) Claims 2-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uchiyama et al. This rejection is set forth in prior Office Action, Paper No. 14.

V. (Issue E) Claims 2-9 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schehrer et al. This rejection is set forth in prior Office Action, Paper No. 14.

VI. (Issue F) The rejection of claims 2-9 and 14-16 under 35 U.S.C. 103(a) as being unpatentable over Handschy et al ('451) in view of Handschy et al ('800) is withdrawn.

(11) Response to Argument

I. (Issue A) The appellant argues that the reference to Uchiyama et al fails to teach the first light source and the reflective image display unit are both mounted to the same mount surface of the mount.

The examiner is in agreement with the appellant that the reference to Uchiyama et al does not physically teach the first light source and the reflective image display being "mounted" to the same mount surface. However, such features are not positively recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The examiner states that appellant's broad recitation of the language "disposed on a mount", as recited in claim 1, does not preclude the first light source and the reflective image display unit being first mounted in or via a casing (1), as depicted in figures 2 and 16 of Uchiyama et al, and then said casing being disposed on the mount surface of mount (10). See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Moreover, the appellant's use of the transitional phase "comprising" does not exclude the presence of additional, unrecited elements or function, such as in the present case of Uchiyama et al with "an additional case (1) for holding and/or securing the first light source, the reflective display unit and the reflective polarizing element". See Moleculon Research Corp v. CBS, Inc., 793 F.2d 1261, 229 USPQ 805 (Fed, Cir. 1986); In re Baxter, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA 1981); and Ex parte Davis, 80 USPQ 448, 450 (Bd. App. 1948).

II. (Issue B) The appellant argues that the reference to Schehrer et al fails to teach various aspects of the invention by individually attacking the figures separately (i.e., Fig. 1A, Fig.7, Fig. 8 and figures 10a to 10d).

The examiner is in agreement with the appellant that one "single" figure of Schehrer et al does not physically teach the first light source and the reflective image display being "mounted" to the same mount surface. However, such features are not positively recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The examiner is of the opinion that the reference to Schehrer et al taken as a whole, would clearly infer one of ordinary skill in the art that the particular display device (500) comprising a first light source [(501), (510) and (533)], a reflective polarizer (505) and a reflector [(502), (512) and ((532) with or without additional mount (534))], as depicted by Figures 7, 8 and 10a to 10d, respectively, serve as one of several different embodiments of the head mounted display represented as element (1), shown in Fig. 1A, which are

mounted to the mounting hardware (2).

The examiner states that appellant's broad recitation of the language "disposed on a mount", as recited in claim 1, does not preclude the first light source and the reflective image display unit being first mounted in or via the head mounted display (1), as depicted in Fig. 1A of Schehrer et al, and then said display being disposed on the mount surface of mounting hardware (2). See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Moreover, the appellant's use of the transitional phase "comprising" does not exclude the presence of additional, unrecited elements or function, such as in the present case of Schehrer et al with "an additional mount (534) for holding and/or securing the first light source, the reflective display unit and the reflective polarizing element" of figures 10a to 10d. See Moleculon Research Corp v. CBS, Inc., 793 F.2d 1261, 229 USPQ 805 (Fed, Cir. 1986); In re Baxter, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA 1981); and Ex parte Davis, 80 USPQ 448, 450 (Bd. App. 1948).

III. (Issue D) The appellant states for appeal purposes, claims 2-9 are grouped together. The appellant further states that claims 2-9 are allowable, since claims 2-9 depend from allowable claim 1, either directly or indirectly.

The examiner states that claims 2-9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Uchiyama et al ('032). Since, the Appellant failed to provide any argument and/or evidence as to why it would not have been obvious to modify the polarizing beam splitter of Uchiyama et al to include a curve reflective polarizer (polarizing film) as is commonly used and employed in the optical art in order to increase light concentration, provide uniform light

transmission or alternatively reduce optical aberrations, bulk and weight of the display system, (i.e., Handschy et al ('800)), the examiner considers that the appellant has acquiesced such features as being obvious over Uchiyama et al.

IV. (Issue E) The appellant states for appeal purposes, claims 2-9 and 13-16 are grouped together. The appellant further states that claims 2-9 and 13-16 are allowable, since claims 2-9 and 13-16 depend from allowable claim 1, either directly or indirectly.

The examiner states that claims 2-9 and 13-16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Schehrer et al ('508). Since, the Appellant failed to provide any argument and/or evidence as to why it would not have been obvious to modify the polarizing beam splitter of Schehrer et al to include a curve reflective polarizer (polarizing film) as is commonly used and employed in the optical art in order to increase light concentration, provide uniform light transmission or alternatively reduce optical aberrations, bulk and weight of the display system, (i.e., Handschy et al ('800)), the examiner considers that the appellant has acquiesced such features as being obvious over Schehrer et al.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

RICKY D. SHAFER
PRIMARY EXAMINER
ART UNIT 2872

RDS
June 30, 2003

Conferees:
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R. Shafer RDS